



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

Notice PIH 97-58 (HA)

HAs with Section 8 Moderate
Rehabilitation; Secretary's
Representatives; State and Area
Office Directors of Public Housing;
State Office Directors of Native
American Programs

Issued: 11/21/97

Expires: **09/30/98**

Cross References:

Subject: Fiscal Year 1998 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts.

1. **PURPOSE:** This Notice provides instructions for implementing Sections 522 (b) and 523 (e) of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (FY '98 Appropriations Act) governing the renewal of HAP contracts under the Section 8 Mod Rehab program. This notice also rescinds Notice PIH 97-46 to the extent that it conflicts with procedures outlined below.

2. **BACKGROUND:** During FY '97, Section 211(b) of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (FY '97 Appropriations Act) required, upon the request of an owner of a multifamily housing project that was covered by an expiring project-based HAP contract, the Secretary renew the expiring HAP contract as project-based assistance for a period of not more than 1 year.

The FY '98 Appropriations Act was enacted on October 27, 1997, as Public Law 105-65; 111 Stat. 1344. Section 522(b) of the FY '98 Appropriations Act extends Section 211(b) of the FY '97 Appropriations Act to cover HAP contracts expiring during FY' 98.

3. **APPLICABILITY:** This Notice applies to all units in a multifamily housing project (including FHA-insured multifamily housing projects) under a Section 8 Mod Rehab HAP contract expiring on or after October 1, 1997 and on or before September 30, 1998. This Notice is not applicable to the Section 8 Moderate Rehabilitation Single Room Occupancy Program.

4. **ELIGIBLE PROJECTS:** The term "multifamily housing project" means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract

for project-based assistance under Section 8 of the United States Housing Act of 1937. HUD will only offer to renew HAP contracts for Mod Rehab units that are located in properties with five or more units.

Example: An owner owns a property with five dwelling units that qualifies under the statutory definition of a multi-family housing project. The owner of the property has a Mod Rehab HAP contract which covers three of the 5 dwelling units on his property. The project is eligible (if all other requirements are met) for a one-year HAP contract renewal. In this example, the owner is eligible because he owns a multi-family housing project (a property consisting of more than 4 dwelling units) and the property is covered in part by a contract for project-based assistance under Section 8 of the United States Housing Act of 1937.

A multi-family housing project is defined as a property that is on either a single site or a single contiguous site with residential structures that share some common ground and are under common ownership.

Example: A property consists of four separate buildings that are all located on the same common site and part of a single apartment complex. There are four units in each building and some or all of the units are covered by an expiring Mod Rehab HAP contract. Any of the sixteen units covered by an expiring Mod Rehab HAP contract are eligible for a one-year Mod Rehab HAP contract renewal (if all other requirements are met). The apartment complex is considered one property and the property consists of more than four units.

5. **STAGED HAP CONTRACTS:** Many Mod Rehab HAP contracts were executed in stages. Each stage has a separate 15-year HAP contract term, and the individual stages of such HAP contracts will expire at different times. For staged HAP contracts, the term of the one-year renewal for each stage commences on the first day after expiration of the HAP contract term for each stage.

6. **RENEWAL RENT LEVELS:** The renewal gross rents must be set at the **lower** of the rent levels in effect on the date the contract expires or 120 percent of the Section 8 existing housing program Fair Market Rents (FMRs) for the area in which the project is located, with the exception of those projects mentioned below.

Sections 211(b)(2) and 211(b)(3) of the FY '97 Appropriations Act were extended and

modified, respectively, for FY '98. Section 211(b)(2) and (3) provide exemptions from the 120 percent of FMRs rent limitation for certain projects. In accordance with Section 211(b)(2), at the request of the owner of a Mod Rehab project where the primary financing or mortgage insurance for the multifamily housing project was provided by a public agency, the HA shall renew such HAP contracts expiring in FY '98 for a period of not more than one year at rent levels that are equal to those under the expiring contract.

Section 523 (e) of the FY '98 Appropriations Act amends Section 211(b)(3) of the FY '97 Appropriations Act. Section 523(e) provides that for Mod Rehab HAP contracts expiring in FY '98, where the rents exceed 100% of the existing FMR for the market area, but are less than rents for comparable projects, the HA shall renew such HAP contracts for one year at rent levels that are equal to those rents under the expiring contract as of the date on which the contract expires. If the current gross Mod Rehab rents for HAP contracts expiring in FY '98 are at or below 120% of the existing FMRs, the HA must renew the Mod Rehab HAP contract at the rents in effect at the time of HAP contract expiration. If the rents in effect at HAP contract expiration exceed 120% of the existing FMR, the HA must then determine whether the rents are less than those charged for comparable units. A comparable unit is an unassisted unit of similar age, quality and type in the same market area. If the rents are less than those charged for comparable units, the rents shall be set at levels equal to rents under the expiring HAP contract as of the date on which the contract expires. If the rents are greater than those charged for comparable units, the rents must be reduced to 120% of the Section 8 existing housing program FMRs for the area in which the project is located.

Units covered by HAP contract renewals are **not** eligible for annual rent adjustments, either at the time of renewal or at any other time during the one-year HAP contract term extension.

7. GENERAL RENEWAL PROCEDURES: HAs will renew HAP contracts by executing, with the owners, a renewal contract which extends the term of the original HAP contract, or the FY '97 renewal HAP contract, for an additional 12 months. (See Attachments A and B).

Assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to rental certificates, and must continue to occupy their current Mod Rehab unit or lose federal rental assistance. (However, see paragraph 10 relating to possible exceptions for tenants residing in units with Mod Rehab HAP contracts expiring between October 1, 1997, and January 31, 1998).

An owner whose HAP contract is renewed for one year may not terminate the tenancy of any Mod Rehab tenant on the basis that the current dwelling lease has expired. The owner may terminate the lease of a Mod Rehab tenant, either at the time of renewal or anytime during the one-year renewal period, only for serious or repeated violation of

the lease, violation of applicable federal, state, or local laws, or other good cause.

8. OWNERS NOT ELIGIBLE FOR RENEWAL OF EXPIRING MOD REHAB HAP CONTRACTS: HAs administering Mod Rehab HAP contracts **shall not** renew an expiring contract if the HA determines that the owner of the multifamily housing project has engaged in material adverse financial or managerial actions or omissions with regard to the project (or with regard to other similar projects if the HA determines that such actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by HUD). An HA should **not renew** an expiring HAP contract if it is determined that the owner of the multifamily housing project is in material default under the HAP contract (including failure to comply with Housing Quality Standards). If an owner is determined to be in material default of the HAP contract, the HA must notify the owner, in writing, within a reasonable time, that a one year renewal of the Mod Rehab HAP contract will not be permitted. The HA must clearly cite the section of the contract upon which it has made its determination.

Owners with properties consisting of 4 or less dwelling units covered in whole or in part by a Mod Rehab contract are not eligible for HAP contract renewal. Families living in Mod Rehab properties with 4 or less units and the Mod Rehab HAP contract is expiring in FY 1998 must be issued Section 8 rental certificates by the HA administering the Mod Rehab HAP contract in accordance with notice PIH 97-46.

9. STATUTORY OWNER NOTIFICATION REQUIREMENTS: The 1997 Emergency Supplemental Appropriations Act (ESAA) (P.L. 105-18, 111 Stat. 158) amended section 8(c)(9) of the United States Housing Act of 1937 which requires owners to provide written notice to HUD and each family before the expiration of a Section 8 HAP contract. The ESAA shortened the prior one-year notice requirement to 180 days. Under 8(c)(9), the owner must send a copy of the notice to the appropriate HA. This notice is required to inform the project's residents of the impending HAP contract expiration.

IF PROPER NOTICE WAS NOT GIVEN

If the HAP contract is not renewed because (i) the owner declined the offer of a one-year renewal; (ii) the property is not eligible; (iii) the owner has been found to have engaged in material adverse financial or managerial actions or omissions with regard to the project (including material default under the HAP contract), and the owner has failed to provide the proper notice under Section 8(c)(9), the tenant is protected as if there were an assisted tenancy until six months from the time the owner actually provides the notice. The HA must issue a rental certificate to the family (if program eligible). If the owner does not give the proper notice, one of the following options may be chosen:

- A. The owner and the family may agree to enter into a rental

certificate tenancy for the unit, in accordance with all certificate program rules (including maximum certificate program rents).

B. The tenant may use the rental certificate to locate another unit, or may otherwise vacate the unit if the tenant so chooses.

C. The tenant may continue to occupy the unit in an unassisted tenancy, and the owner must not, until at least 6 months have passed since the owner's Section 8(c)(9) notice, increase the tenant's rent above the level of the tenant payment (i.e. tenant rent) under the expiring HAP contract. The owner is not entitled to any Section 8 rental assistance payments. Also during this time, the owner cannot terminate the tenancy of the family other than for serious or repeated violation of the lease, violation of applicable federal, state, or local laws, or for other good cause.

10. PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 1, 1997 AND JANUARY 31, 1998: Upon receipt of this Notice, the HA must, within five business days, notify eligible owners of their right to request a one-year renewal of their expiring Mod Rehab HAP contracts. Owners must request a renewal within 15 days of the date of the HA's notification. If the owner elects not to renew the expiring HAP contract, or if the owner fails to respond in accordance with the HA's instructions, the HA must immediately issue rental certificates to the affected Section 8 eligible families and the Mod Rehab HAP contract terminates.

For many of the units in this category, the families living in Mod Rehab projects will already have received rental certificates pursuant to Notice PIH 97-46. Regardless of whether such a family has already submitted a request for lease approval, is still shopping, or has signed a lease, the family cannot be **required** to forfeit its certificate. If the family and the former Mod Rehab owner have signed a lease for the family to remain in the unit under the rental certificate program, the unit is not eligible for Mod Rehab HAP contract renewal. Instead, the owner receives rents as provided in the rental certificate HAP contract.

For those Mod Rehab HAP contracts that expired on or after October 1 and before receipt of this notice, where the same family is living in the unit without rental assistance, (i.e., the owner and the family have not signed a lease under the Section 8 rental certificate program), the family is only responsible for its share of the rent and shall not be held responsible for the housing assistance payment due the owner for the month of October and or November. Instead, the HA will pay the owner the housing assistance payment for the month of October, and, or November, if the owner requests an extension of the Mod Rehab HAP contract in accordance with this notice at a rent level to be determined in accordance with this notice.

In cases where Mod Rehab HAP contracts expired prior to receipt of this Notice and where owners have leased former Mod Rehab units to market rate tenants or Section 8 income eligible tenants prior to the execution of the Mod Rehab renewal contract, such units are not eligible for a Mod Rehab HAP contract renewal. The HA must not include these units in the renewal HAP contract.

If a family formerly assisted under the Mod Rehab program has received a rental certificate, but the family and the Mod Rehab owner have not signed a lease under the Section 8 rental certificate program, the family may continue to reside in the unit as a Mod Rehab tenant, but would have to relinquish participation in the Section 8 rental certificate program. If such a family chooses not to relinquish its Section 8 rental certificate, and the owner elects to renew the Mod Rehab HAP contract, the family would be required to move. If such a family chooses to relinquish the certificate, the renewal of the Mod Rehab contract shall be made effective as of the date of the Mod Rehab contract expiration.

If the Mod Rehab HAP contract is renewed, and the family has already received a Section 8 rental certificate and is moving to a new unit under that program, the owner must occupy the Mod Rehab unit with a program eligible family referred by the HA from its waiting list. This will result in HUD and the HA paying two separate subsidies (i.e., one subsidy supporting the rental certificate of the former Mod Rehab family, and one supporting the new family moving into the Mod Rehab unit).

11. PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN FEBRUARY 1 AND SEPTEMBER 30, 1998: HAs must require owners to request a renewal at least 75 days prior to the termination of the HAP contract. If the owner elects not to renew the expiring HAP contract, or if the owner fails to respond in accordance with the HA's instructions, the HA must issue rental certificates to the affected Section 8 eligible families at least 60 days prior to the expiration date of the Mod Rehab HAP contract. If the owner requests renewal of the HAP contract, and the HA renews the HAP contract in accordance with the procedures contained in this Notice, the assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to rental certificates. They must continue to occupy their current Mod Rehab unit or lose federal rental assistance.

12. UNITS THAT BECOME VACANT DURING THE ONE-YEAR HAP CONTRACT RENEWAL TERM: Owners may fill units covered by the Mod Rehab renewal HAP contract that become vacant during the one-year renewal term with eligible tenants referred by the HA. The lease must terminate on the date the Mod Rehab renewal HAP contract expires. At the Section 8 briefing, the HA must inform a family that chooses to rent a Mod Rehab unit with a HAP contract that will expire in less than one year that the project-based assistance will end if the HAP contract is not renewed in FY '99, and if, and when the Mod Rehab HAP contract ends, eligible families will be offered Section 8 tenant-based rental assistance.

13. **VACANCY PAYMENTS:** In some cases, Mod Rehab HAP contracts expired prior to the issuance of this Notice. In cases where a Mod Rehab HAP contract expired prior to the HA's notification to the owner of the right to a one year HAP contract renewal, and where some or all of the former Mod Rehab units were vacant at the time the owner notifies the HA of the owner's intention to renew in accordance with this notice, the owner is entitled to vacancy payments, if requested, in accordance with 24 CFR section 882.411(b).

Example: a Mod Rehab HAP contract expired October 15, 1997 and some of the units have **remained** vacant since the former Mod Rehab families vacated the units on October 15, 1997. The owner was notified of the right to a Mod Rehab HAP contract renewal on November 15, 1997 and the owner has informed the HA of the owner's decision to renew. If the owner requests, the owner is entitled to the HAP on the vacant units for as much of the month of October as the units were vacant and 80% of the contract rent for the month of November prorated for the time the unit remains vacant. In a case such as the one described above, the requirement contained in §882.411(b)(i) that requires the owner to immediately notify the HA of the vacancy in order to be entitled to a vacancy payment does not apply.

If the owner reoccupies the former Mod Rehab unit before the Mod Rehab renewal contract has been executed, the owner is not entitled to a vacancy payment on that unit.

The Mod Rehab renewal HAP contract must be made effective the first day after the original Mod Rehab HAP contract expiration date.

14. **OTHER MATTERS:** This Notice does not address the procedures for extending Annual Contributions contracts (ACC), the source of funding the Mod Rehab HAP contract renewals, how to deal with the fact that certificate replacement funds have already been assigned/obligated for all Mod Rehab units expiring through 12-31-97, or other financial related matters. These will be addressed in a separate Notice. HUD will, however, provide renewal funds to extend ACCs.

_____/s/_____
Kevin Emanuel Marchman, Acting
Assistant Secretary for Public
and Indian Housing